

Before the
Federal Communications Commission
Washington, D.C. 20554

In the Matter of)	
)	
2016 Biennial Review of Telecommunications)	CG Docket No. 16-124
Regulations)	EB Docket No. 16-120
)	

Joint Comments

Christian Worldview Broadcasting Corporation (hereinafter “CWBC”) and
Broadcasting for the Challenged, Inc. (hereinafter “BFTC”), by their attorney, hereby
respectfully submit their Joint Comments in the above-referenced proceeding(s):

A. Background

1. CWBC is a noncommercial educational broadcaster and licensee of WTWV
(DT), Memphis, TN (Facility ID #81692). BFTC is a noncommercial educational
broadcaster and licensee of WWTW (DT), Senatobia, MS (Facility ID #84214).

2. On November 3, 2016, the Commission released a Public Notice (FCC 16-
149) seeking “input from the public as to what rules should be modified or repealed as
part of the 2016 Biennial Review”. As noted in the Public Notice:

**Section 11 of the Communications Act of 1934 (as amended, 47 U.S.C. §
161) ... requires the Commission to (1) review biennially its regulations
“that apply to the operations or activities of any provider of
telecommunications service,” and (2) “determine whether any such
regulation is no longer necessary in the public interest as the result of
meaningful economic competition between providers of such service.”
Section 11 directs the Commission to repeal or modify any regulation that
it finds are no longer in the public interest.**

3. As further noted in the November 3, 2016 Public Notice by Commissioner Pai:

Section 11 prescribes that every two years, the FCC “*shall review all regulations . . . that apply to the operations or activities of any provider of telecommunications service*” and “*shall determine whether any such regulation is no longer necessary in the public interest as the result of meaningful economic competition between providers of such service*”. If the Commission finds that the public interest no longer demands any such regulation, it “*shall repeal or modify*” that regulation.

4. Both CWBC and BFTC operate mid-to-small market noncommercial television stations battling financial and competitive headwinds. For the reasons discussed hereinbelow, CWBC and BFTC believe now is an appropriate time for the FCC to consider modifying Section 73.621 of the Commission’s Rules and Regulations (and related Sections such as 73.624, 73.642 and 73.644, as may be appropriate) to slightly expand a noncommercial broadcaster’s right to broadcast ancillary or supplementary services by removing the limitation that the service must be subscription in nature. No change to the FCC’s requirement that a noncommercial station’s **primary** broadcast stream must remain commercial-free is proposed herein.

B. Discussion

5. While some groups may have a vested interest in protecting the status quo, nobody can reasonably argue that the public interest is served by having less programming diversity. Noncommercial stations have historically provided unique and valuable programming, employing only a fraction of the available financial support systems of commercial stations. The continued viability of noncommercial stations (and noncommercial programming generally) is gravely at risk. This is not hyperbole: This is simply reality. In a world where state and federal funding for noncommercial stations is

increasingly considered a luxury and not a priority, additional avenues for support must be explored. Historically, any previous attempt to consider allowing noncommercial stations to continue their great programming through unrelated commercial support has often been met with the standard mantra that “it will destroy the noncommercial nature of the programming”. This maxim has never been shown to be accurate. It is simply one of those self-perpetuating “realities” which never can be debunked due to the lack on any empirical evidence.

6. While there has been, over the past five or six decades, impassioned discussion regarding commercial advertising or underwriting on noncommercial stations, undeniable change has been occurring over the years (changes which have accelerated exponentially in recent years). Major factors have emerged which require the FCC to act urgently if it truly seeks to maintain the viability (and, ultimately, the continued existence) of noncommercial stations and programming. First and foremost, federal and state funding for public broadcasting stations is increasingly under attack. Anecdotal evidence indicates that Congress is set to seriously consider in 2016 the elimination of the Corporation for Public Broadcasting funding. Even if total elimination of funding for noncommercial programming does not occur, anyone that believes that public funding for noncommercial stations and programming will increase in the future is (a) ignoring established trends and (b) probably seeking to protect the interests of its commercial clients or constituents.

7. The simple truth is that the concerns expressed in the past regarding advertising on, or commercial remuneration in support of, noncommercial broadcasting are outdated given the current reality of the broadcast and digital landscape. Years

ago, concerns about the commercialization of noncommercial programming were rooted in the fact a single over-the-air broadcast stream was implicated (and, to a certain extent, that there were far fewer groups in control of very limited spectrum). In the current digital world, there are several broadcast streams available to individual broadcast stations for programming (which are in addition to the stations' traditional "primary" over-the-air signal). In short, broadcast streams that were not even contemplated decades ago when the ban on noncommercial advertising was being developed are now available to stations for programming. In fact, many more such channels/programming choices will become available as the new ATSC 3.0 standard is adopted in the very near future. In addition, many alternative digital platforms currently exist which are challenging the traditional role noncommercial stations (and their programming) have played. Succinctly stated, noncommercial stations are under fiscal and competitive siege. Ignoring this reality will only guarantee that the very thing that is purportedly sought to be protected shall succumb. Those that believe that such concerns are shrill should look to the plight of print media as a canary in the coal mine. Change happens incredibly quickly. That is the new reality. Even those that advocate a Darwinian approach to "change" have to acknowledge that noncommercial stations must be given a realistic chance to fight for their survival.

8. CWBC and BFTC propose one simple tweak to Section 73.621 (and its related sections): Remove the limitation that a noncommercial broadcaster's right to broadcast ancillary or supplementary services on non-primary channels must be subscription in nature. Allowing noncommercial broadcasters to accept third-party commercial support on secondary broadcast channels will not undercut the

noncommercial nature and mission of broadcasters, which are, among other things, still directed by their governing documents and IRS regulations.

9. The Commission has at its disposal data which indicates the extent to which noncommercial stations, in the 15 years subsequent to the FCC's October 17, 2001 Report and Order in MM Docket No. 98-203 (FCC 01-306), "Ancillary or Supplementary Use of Digital Television Capacity by Noncommercial Licensees" (which set forth the FCC's interpretation of the noncommercial rules related to ancillary broadcast use on a subscription basis), have availed themselves of the commercial subscription model on secondary channels (and paid the requisite 5% FCC fee). Even without having any information at its disposal, the undersigned Commenters venture that virtually no noncommercial broadcasting group has substantially availed itself of the current subscription opportunity. As such, no meaningful financial aid to stations has been effectuated, which demonstrates that a slighter more expansive allowance of financial support in connection with non-primary broadcast streams should be permitted.

10. To the extent that the Commission feels some reticence about embarking upon this slight change, CWBC and BFTC would support a multi-year pilot program which would allow stations to operate their secondary channels under the new guidelines in return for reporting relevant statistics to the FCC (which would in turn allow the FCC to compile empirical data regarding what changes, if any, might be implicated by a permanent change in the rules).

C. Conclusion

Make no mistake about it. Noncommercial stations (and programming) are threatened with proverbial extinction. As in the case of threatened animals, a failure to act proactively will result in irreversible consequences. Once a species dies off, we are all a little poorer for its loss. The proposed rule modification is not a doomsday scenario: It is a lifeline. Unless we all, including the FCC, entertain timely and reasoned approaches to these real fiscal and competitive problems, it will be too late. We know what we have to lose if we don't act. Why not try this tweak; garner some data; and craft longer term solutions. This is the essence of action in the public interest.

Respectfully submitted,

**Christian Worldview Broadcasting
Corporation**

Broadcasting for the Challenged, Inc.

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